REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 59] NEW DELHI, SATURDAY, APRIL 18, 1959/CHAITRA 28, 1881

MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi the 15th April 1959

S.O. 836.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Nagpur, in the industrial dispute between the employers in relation to the management of North Chirimiri Colliery, P.O. Chirimiri, and their workmen represented by the Chhattisgarh Colliery Workers' Federation.

BEFORE SHRI P. D. VYAS, JUDGE, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NAGPUR AT BOMBAY.

REFERENCE (CGIT) No. 6 OF 1958.

An adjudication between

The employers in relation to the Management of North Chirimiri Colliery, P. O. Chirimiri, Surguja Dist.

AND

Their Workmen represented by the Chhattisgarh Colliery Workers' Federation.

In the matter of an industrial dispute *re.* 12½ per cent increase in basic wages in terms of para (2) of the Korea Award.

APPEARANCES:

Shri B. Narayanaswamy, Advocate—*for the Management.*

Shri R. L. Malviya, M.P.—*for the Workmen.*

AWARD

In exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947, the Central Government was pleased to refer an industrial dispute for adjudication under the Order No. LRII-1 (42)/58 dated 6th May, 1958 on a joint application of the employers in relation to the North Chirimiri Colliery and their workmen represented by the Chhattisgarh Colliery Workers' Federation and on being satisfied that the said Union represents a majority of the workmen. The dispute relates to the matters set-forth in the said joint application and reproduced in the schedule annexed to the Government Order of reference.

THE SCHEDULE

"Whether the workers of North Chirimiri Colliery are entitled to 12½ per cent. increase in basic wages in terms of para (2) of the Korea Award. If so, which categories of workers and for what period?

2. On the usual notices being issued, the President, Chhattisgarh Colliery Workers' Federation has filed the statement of claims on behalf of the workmen and the Manager, North Chirimiri Colliery has filed the written statement on behalf of the employers.

3. The case on behalf of the workmen is that the State of Korea was merged with the Central Provinces and Berar on 1st January, 1948. Before its merger it was a Feudatory State under the British Crown and formed part of Orissa and Chhattisgarh States in the Eastern States Agency, administered by the Agent to Viceroy and Governor General of India. The State of Korea was ruled by the Ruler called the Darbar. Due to a general rise in prices of essential commodities the wages of Colliery Workers in the coalfields of Bengal, Bihar, Orissa and Central Provinces and Berar were increased. Apprehending repercussions of this increase in the Collieries situated in his own State, the Korea Durbar was pleased to issue a notification on the 15th of November, 1947 in Korea State Gazette Extraordinary of the same date. This is popularly known as Korea Award and under it the wages of colliery workers were increased on the basis of the principles laid down in the conciliation Board Award of Bengal and Bihar and the recommendations of the C. P. Fact Finding Committee. The Korea Award has been made operative with effect from 1st November, 1947, and the North Chirimiri Colliery being then situated within the administrative jurisdiction of Korea Durbar, the Management is bound by the terms and conditions of Korea Award.

4. Para 2 of Korea Award provides that: "any class of employees not entitled for any increase in wages under the provisions given above may be granted an increase of 12½ per cent. in their basic pay." Though the management enjoyed the increase in price of coal granted to them by another notification of the Durbar issued on 15th November, 1947, and to a large extent paid wages in terms of para 1 of the Award, it failed to increase the wages of the workers covered by para 2 of the Award. These workers are therefore entitled to the increase of 12½ per cent. in their basic pay or wages with effect from 1st November, 1947, till the Korea Award remained in operation, *i.e.*, 26th May, 1956, on which date the award of All India Industrial Tribunal (Colliery Disputes) came into force.

5. The management by its written statement contends that the order dated 6th May, 1958, making the present reference is without jurisdiction and ultra-vires of the Industrial Disputes Act and in any event the dispute referred to by the said order is barred by the principles of res-judicata, estoppel, waiver and acquiescence. The management admits the publication of a Notification by the Korea Darbar on 15th November, 1947, containing the aforesaid clause 2, that any class of employees not entitled to an increase in wages under the provisions of clause 1 of the said Notification, might be granted an increase of 12½ per cent. in their basic pay with effect from 1st November, 1947 and that the North Chirimiri Colliery is situated in Korea. The case of the management however is that the Korea State had no power to publish any such Notification in view of the fact that the Eastern State Union Constitution Act 1947, came into force from 1st August, 1947. Any such Notification could only be termed as an administrative order of the State with no legal sanction behind it. Assuming there existed any legal sanction, even then the intention of the State was to leave the increase in wages entirely to the discretion of the management. The workmen made no claim in this behalf and were satisfied without any such increase for more than 10 years and they gave a go-bye to their rights, if any, under the said Notification in respect of the said clause. The joint application for reference under section 10(2) of the Industrial Dispute Act was agreed to be made in the interest of industrial peace although the workers were not entitled to any benefit under the said clause 2 of the Korea Notification. In any event, the said joint reference was only concerned with the interpretation of the said clause 2 of the Korea Notification and did not constitute an independent or fresh dispute.

6. The annexure 'A' to the workmen's statement of claims is the copy of the Korea Notification published by Authority in the Korea State Gazette Extraordinary, November 15, 1947 and it is on the subject "Wages of Colliery Workers". The preamble of the Notification states:—

> "Whereas there has been a general rise in the prices of essential commodities necessitating a positive policy to bring about an improvement in the conditions of workers in the Coal Mining Industry.
>
> And whereas the wages of colliery workers have been increased in the Coalfields of Bengal, Bihar, Orissa, C.P. and Berar which are bound to have repercussions in the Coalfields of Korea State."

And then it goes on to provide:

> "Now, therefore, the Korea State Government after a careful consideration of all factors affecting the industry in the State and in order to assure minimum wages to colliery workers, hereby orders as follows:—"

The clause 1 thereof prescribes minimum basic wages to be paid to certain piece-rated workers and clause 2 which is the relevant clause in the present dispute lays down:

> "Any class of employees not entitled for any increase in wages under the provisions given above may be granted an increase of 12½ per cent. in their basic pay."

The other clauses of the Notification deal with the questions relating to D.A., Lead and Lift, Explosives etc., Foodstuffs, Bonuses, Compulsory Contributory Provident Fund and Disbursement of wages. The last clause states that the order shall apply retrospectively with effect from 1st November, 1947. Then follows the words "By Order, Sohanlal Srivastava, Chief Minister, Korea State." It is in pursuance of clause 2 of this Notification, popularly known as Korea Award that 12½ per cent increase in basic wages is now claimed with effect from 1st November, 1947 upto 25th May, 1950 in respect of all the workers excepting those covered under clause 1 and for whom the specific rates of wages are prescribed. Thus the claim covers all the workmen including those appointed before and after 1st November, 1947 and excluding those specified in the said clause 1. The management now resists inter alia the workmen's demand by denying the binding effect of this Korea Notification.

7. At the outset may be noted the circumstances under which the present reference happened to be made on the joint application of the parties. So back as in the year 1950 a question arose regarding another matter pertaining to Korea Award. The annexure B to the statement of claims is the certified copy of the memorandum of agreement dated 17th February, 1950, arrived at in the presence of Conciliation Officer (C) Nagpur and Regional Labour Commissioner (C) Dhanbad, to which the management of North Chirimiri Colliery along with several other collieries and Shri R. L. Malviya, President of the Chhattisgarh Colliery Workers Federation were the parties. This agreement runs thus:

> "Both the parties agree that the Korea Award be accepted in full and that the question whether the rate given in the Award in respect of loaders is for the coal loaded in loose or in solid be referred to the Tribunal for adjudication.
>
> Further agreed that as the representatives of the proprietors feel that they cannot take decision without consulting their principals they will have their views and communicate the same to the Conciliation Officer (C) Nagpur and the Regional Labour Commissioner (C) Dhanbad, by the 5th March, 1950, failing which the question at issue will be referred to the tribunal and status quo will be maintained till adjudication."

It is thus clear that the representatives of Collieries who then appeared not only did not challenge the validity or binding effect of the Korea Award but accepted it in full and the question then in dispute between the parties regarding the rate of coal loaded was to be referred to a Tribunal for adjudication. It is true that the representatives of the collieries wanted time to consult their principals and the objection if any was to be communicated by the 5th March 1950, failing which the reference for adjudication was to be made to a Tribunal. We do not find that any objection was communicated or any contrary view was expressed thereafter and in fact the reference was made to the Central Government Industrial Tribunal at Dhanbad being reference No. 10 of 1950 for determining the rate to be paid to the loaders on the basis of the Korea Award. The annexure 'C' to the workers' statement of claims is the award of this Tribunal dated 12th April, 1951 in the said reference directing that the payment to the loaders be made on the basis of measurement of loose coal handled by them. The Korea Award itself was not then in dispute and no point regarding its validity was raised by the managements of the collieries including North Chirimiri Colliery. Shri Malviya for the workmen pointed out that not only Korea Award was never before disputed but that the various other provisions there laid down under clauses 1, 3, 4, 6, 7, 8 and 9 have been carried out.

8. It was about the time of the present reference that the management of North Chirimiri Colliery tried to deny its liability to give an increase of 12½ per cent in terms of clause 2 of the Korea Award. The annexure 'D' to the statement of claims contains minutes of Conciliation Proceedings held on 28th March, 1958 stating inter alia:—

> "The representative of the management contended that Korea State was merged in Madhya Pradesh on 1st January, 1948 and at that time there was reduction in the price of coal by about Rs. 2/- per ton. There was therefore a doubt as to whether the provisions of the Korea Award should be implemented. On account of this doubt the aforesaid Memorandum of settlement was drawn up. But even in this settlement the implementation of Korea Award was not finally settled, as in para (2) of the Agreement it was stated that the matter should be referred to the Head Offices of the Managements and if they failed to reply by the 5th March, 1950 it should be construed that the employers did not agree. He further stated that the Korea Award relating to 12½ per cent payment if at all to be implemented might be applicable only to those employees who were on the pay rolls of the Colliery on 1st November, 1947. He sought clarification from the Federation as to which categories of employees are said to have not been given the benefit of 12½ per cent increase."

The President of the Federation then stated that according to him all the employees who were on the Pay Rolls of the Colliery on 1st November, 1947 should be given the benefit and he added that on principles of social justice and also those enunciated in the C.P. Fact Finding Committee Report, the workers who have been appointed after 1st November, 1947 on lower wages should also get the benefit of 12½ per cent increase. Then the minutes conclude saying that as the parties did not come to an agreed solution of the question regarding payment of 12½ per cent of the basic wages as mentioned in the Korea Award, it was decided that "a joint application will be made for reference to the Industrial Tribunal as provided under section 10(2) of the Industrial Disputes Act, 1947."

9. It is evident that during the Conciliation proceedings the management tried to give a different colour to the aforesaid memorandum of agreement dated 17th February, 1950. There is nothing in the agreement to suggest that because of any reduction in the price of coal, a doubt had arisen as to whether the provisions of the Korea Award should be implemented and that was the reason why the said memorandum of agreement was drawn up On the contrary the agreement starts with a categorical statement that both the parties agree that the Korea Award be accepted in full and the only question to be referred for adjudication was regarding the rate given in the award in respect of loaders for the coal loaded in loose or in solid. Though the time was then taken to consult the principal of the collieries, it is untrue to say that if no reply was received by 5th March, 1950 it should be construed that the employers did not agree. What the memorandum states is that if no communication is received by the 5th March, 1950 the question at issue was to be referred to a Tribunal for adjudication and the reference in fact was made and decided accordingly. The only real point raised during the Conciliation proceedings was regarding the employees entitled to the benefit of 12½ per cent. increase under clause 2 of Korea Award. The employers desired this point to be made clear and they maintained that the benefit should be applicable to only those who were on the pay rolls of the colliery on the 1st November, 1947. The President of the Federation on the other hand urged that not only the employees who were on the pay rolls of the colliery on the 1st November, 1947 but also those appointed after the 1st November, 1947 at lower wages should also get the benefit of 12½ per cent. increase under the Korea Award.

10. It was under these circumstances that the joint application was made to the Government for a reference under section 10(2) of the Industrial Disputes Act, 1947 read with rules 3 and 4 of the Industrial Disputes (Central) Rules, 1957. The letter as per annexure 'E' (to the statement of claims) forwarding the application is signed by the representatives of the management as well as the employees and it stands thus:

> "In terms of section 10(2) of the Industrial Disputes Act, 1947 and rules 3 and 4 of the Industrial Disputes Act, 1957 we forward herewith a joint application for reference of the dispute regarding payment of 12½ per cent. increased basic wages to the employees of the North Chirimiri Colliery under the Korea Award, for favour of necessary action."

With this was attached the application in form 'A' together with the requisite statement giving the particulars required under rule 3 of the Industrial Disputes (Central) Rules, 1957. The said statement mentions *inter alia* the estimated number of workmen affected by the dispute as 500 and describes the specific matters in dispute as:

> "Whether the workers of North Chirimiri Colliery are entitled to 12½ per cent. increase in basic wages in terms of para. (2) of the Korea Award. If so, which categories of workers and for what period."

In pursuance of the said joint application the Government has made the present reference in the same terms as agreed between the parties.

11. Shri Narayanaswamy on behalf of the employers at the time of the hearing argued that the latter part of the demand is not much in dispute but the really important matter for adjudication is one covered under the first part of the terms of reference, *viz.*, whether the workers of North Chirimiri Colliery are entitled to 12½ per cent. increase in basic wages in terms of para. (2) of the Korea Award. He now wanted to raise the points as to (1) whether the Korea Award is binding to the Company, and (2) assuming the Korea Award is legal and binding, whether the direction in clause (2) of the award is mandatory or recommendatory. He further contended that the reference is bad inasmuch as the subject-matter of the reference is in the nature of an implementation of the award and that there is no industrial dispute as such which could be referred for adjudication.

12. Manifestly the contentions raised on behalf of the management seem to be an after thought especially when the reference has been made on the joint application of the parties and in view of the aforesaid agreement dated 17th February 1950 at which time the Korea Award was accepted in full. The joint application of the parties itself states: whereas an industrial dispute exists between the employers of North Chirimiry Colliery and the Chhattisgarh Colliery Workers' Federation and it is expedient that the matters specified in the enclosed statement which are connected with or relevant to the dispute should be referred for adjudication by a Tribunal, an application is hereby made under section 10(2) of the Industrial Disputes Act, 1947 that the said dispute should be referred to a Tribunal. The subject-matter of the dispute as said above is "whether the workers of North Chirimiri Colliery are entitled to 12½% increase in basic wages in terms of para (2) of the Korea Award. If so, which categories of workers and for what period?" It is no gainsaying the fact that this is an industrial dispute as defined in section 2(k) of the Industrial Disputes Act which means *inter alia* any dispute or difference between employers and workmen which is connected with the terms of employment. The dispute is not merely in the nature of implementation of an award, inasmuch as the Korea Notification though popularly known as Korea Award is not an award as commonly understood or as defined in the Industrial Disputes Act. The workers' claim is based on a certain Notification issued by the then Korea State Government as per the first part of the terms of reference and it is only after the first part is decided that the relief under the second part follows. If the employers deny their liability to pay 12½% increase in terms of para (2) of the Korea Notification, it means that there is a dispute between the employers and their workmen on the terms of their employment which according to the workmen, in so far as their wages are concerned, should be governed for the period from 1st November 1947 to 25th May 1956 in terms of the said clause 2 of the Korea Notification.

13. The main point for our consideration is whether the Korea Notification is bad as contended on behalf of the employers. Shri Narayanaswamy argued that the Korea Award is void *ab initio* with no legal sanction behind it. If knowingly or unknowingly any part thereof was at any time complied with by the management, that circumstance by itself is not enough to validate the award if it is otherwise invalid. He contended that the Notification was issued in contravention of the provisions of the Eastern States Union Constitution Act 1947 while the Korea Darbar continued to remain as Member of the said Union and it has not been shown under what authority this Notification was issued. Similar question arose in Appeal (Bom.) No. 139 of 1956 between the workers of the Jhagrakhand Collieries Limited represented by the Chhattisgarh Colliery Workers' Federation and the Employers in relation to the Jhagrakhand Collieries Limited and it has been dealt with by the Labour Appellate Tribunal in its decision dated 13th May 1958. There also the dispute referred for adjudication was "are the workmen of the Jhagrakhand Collieries who were not entitled to any increase in wages under para 1 of the Notification issued by the Korea State Government, dated the 15th November, 1947, entitled to any increase in wages in accordance with paragraph 2 thereof, and if so, to what extent and from which date such

increase should be allowed." The following observation in paragraphs 11 to 18 of the said decision equally apply with the same force to the question raised in the present reference:

"It is obvious that right upto the date of the reference no party had ever contended that the Korea Award was invalid *ab initio* or otherwise, or that the Korea Government on 15th November 1947, when it issued the Notification, had no power to do so; and thus no question was referred to the Tribunal by the Government concerning the validity of the Korea Award. It is evident that the employers had not only accepted the Notification in its entirety with the bare exception of paragraph 2, but they had also acted upon it; and even as regards paragraph 2 most of the Collieries have come to terms with their workmen as to the amount to be paid with retrospective effect."

"During the course of the hearing before the Industrial Tribunal, this concern for the first time pressed for a decision that the Notification of the Korea Government of 15th November 1947 was made without authority, and that even if it was made by authority it had failed to have binding effect on the colliery owners concerned. It was urged that on the 1st of August 1947 there had been a merger of States in that area, and that the State of Korea had become part of the Eastern States Union. There was a Notification in the Korea State Gazette, dated 23rd July 1947 to the effect that whereas the Rulers of the States in Chhattisgarh and Orissa Agencies had formally accepted on 11th July, 1947 the Eastern States Union Constitution Act, 1947, and executed an Instrument of Accession, and whereas it was expedient to adopt the Eastern States Union Constitution Act, 1947, by Korea Durbar, the Korea Durbar was pleased to notify that the Eastern States Union Constitution Act, 1947, would come into force in the Korea State with effect from the first day of August 1947. There is a further Notification in the Korea State Gazette of 1st August 1947, to the effect that the Eastern States Union Constitution Act, 1947 adopted by the Durbar, *vide* Notification dated the 23rd July, 1947, published in the State Gazette Extraordinary of the same date, was being published for general information. Mr. Khambatta appearing on behalf of the concern has not been able to produce before us the Eastern States Union Constitution Act, 1947, as was said to have been published in the State Gazette Extraordinary of 1st August, 1947. The representative of the workmen appearing before us, who belongs to that area is emphatic that it was never so published. But nevertheless a printed copy of the Union Constitution has been produced before us, not published by authority."

"It is evident that upon the withdrawal of British paramountcy there were attempts by the small Indian States to form themselves into unions, and this Eastern States Union was one of them. But there is no evidence to show that this union ever had any existence or that it ever functioned as provided by the Constitution Act or at all. Indeed the very fact that this Korea Award of 15th November 1947 was made by the Korea Government, contrary to the terms of the Eastern States Union Constitution Act which provided that the subject matter of this Notification was a legislative function of the Union, *prima facie* suggests that the Union had never came into force and had never functioned. As to this Shri Khambatta had suggested that the Korea Government in making the Notification had overstepped the limits of its jurisdiction; but on the other hand this is not the only Notification issued by the Korea Government on 15th November 1947. Every attempt on our part to ascertain from Shri Khambatta facts or circumstances to indicate that the Eastern States Union had functioned or was a body kept alive after 1st August 1947 elicited the same reply: that it was for labour to establish that the Eastern States Union had never functioned. In the circumstances existing after 23rd July 1947 to which we shall hereafter refer, it could not be said that the burden of proving the existence of the Eastern States Union was upon labour. In any event we do not attach much importance to this question of burden of proof; it is evident that if Shri Khambatta was asserting that the existence of the Eastern States Union deprived the Korea Government of their legislative powers, the Tribunal could reasonably expect Shri Khambatta to show some satisfactory indication of the very existence of the Eastern States Union, apart from the Notification."

"The preamble to the Eastern States Union Constitution says that certain Rulers of the States in Orissa and Chhattisgarh Agencies resolved on 18th July, 1946 to promote a Federal Union of their respective States; that they formally accepted the Constitution on 11th July, 1947; and section 3 of the Constitution Act provides that the Union Constitution shall come into operation on 1st August, 1947. Independence Day for India was 15th August, 1947, and events moved fast towards the latter part of July 1947. According to the White Paper on Indian States, a conference of Rulers and representatives of Indian States was held in the Chamber of Princes on Friday 25th July 1947, when Lord Mountbatten as Viceroy presided. He reiterated that the withdrawal of paramountcy of the British enabled the States to regain complete sovereignty; the Indian Independence Act released the States from all their obligations to the Crown; the States had complete freedom and technically and legally they were independent. But he presented to the meeting a draft instrument of accession which he had caused to be circulated as a basis for discussion and which provided that the States should accede to the Dominion of India on three subjects without any financial liability, and those three subjects were Defence, Foreign Relations and Communications. At that meeting Lord Mountbatten proposed the formation of a Committee for a detailed consideration of the items on the agenda, and that Committee included the Raja of Korea. Lord Mountbatten trusted that none of the State representative would leave Delhi, and that they would maintain daily contact with the members of the Committee to make sure that the Committee was conversant with the majority feeling in the States. It is a matter of history that the Princes at that time agreed to divest themselves of sovereignty over Defence, Foreign relations and Communications. And this was done before the 1st of August and before Independence Day of 1947. It may be noted in retrospect that on 5th July 1947, Sardar Patel had issued an important statement defining the policy of the Government of India and inviting the States to accede to the Union on the three subjects of Defence, Foreign Affairs and Communications. The meeting which was subsequently called by Lord Mountbatten was a continuation of that process."

"Again at page 40 of the White Paper we find that in the Second week of December 1947 Sardar Patel visited Cuttack and Nagpur and had long discussions with the Rulers of the States, and it was eventually decided to integrate these small States into the adjoining Provinces. The Orissa and Chhattisgarh States numbering 39 covered an area of about 56,000 square miles with a revenue of 20 million rupees and a population of 7 million. The agreements signed by the Rulers of these States on 14th December 1947, and subsequent dates, provide for cession by them to the Dominion Government of full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of their States. There was thus a steady movement starting in early July 1947 with the proposal of Sardar Patel, followed up at the end of July with the agreement for cession of Defence, Foreign Relations and Communications to the Dominion Government, and finalising with the agreement on behalf of all these states to integrate with the Union of India in December 1947. The formal documents of course took time. But this was the process."

"Now let us examine whether the Eastern States Union ever came into existence or ever survived the onslaught of new forces. What did the Eastern States Union intend to secure for the States? There is a special clause on this subject in the Eastern States Union Constitution Act. Section 5 of the Act which deals with "benefits of accession" provide that "subject to the provisions of this Act the Union will secure to a Member State the preservation of its territorial integrity, a constitutional form of Government and the continuance of the Ruling Dynasty." Before 1st August 1947, when this Eastern States Union Constitution was to have come into operation, the States had already agreed to surrender Defence, Foreign Relations and Communications to the Indian Government and had already parted with the major portion of that sovereignty which the retirement of paramountcy had brought to them. Thus one of the main purposes of the Union had already ceased to exist. Secondly, there was from the very first a consistent move towards the integration of

the Princely States into the Union of India, and so far as this area was concerned, they had by the end of 1947 agreed to integration, and that meant the end of the Eastern States Union. Mr. Khambatta has pointed out that since the Eastern States Union Constitution Act had been passed we must assume that it had come into existence and had functioned. We might as well say that the Eastern States Union Constitution Act has not yet been repealed, and yet the Korea State is a part of India."

"We conclude that although there was a movement towards the establishment of an Eastern States Union, the constitution of which had been approved by some of the Rulers of the contiguous States, the fact remains that the rapid march of events in the second half of July 1947 and what happened subsequently divested the Eastern States Union of its utility, and it is therefore not surprising that the Eastern States Union disappeared into the background, never functioned, and was not heard of again. We hold that in pursuance of this position the Korea Government in its own name issued the Korea Award by its notification of 15th November, 1947, as well as another Order of the same date giving the colliery owners an increase in the selling price of coal consequent upon the rise in the wage bill."

"It has been urged by Shri Khambatta that there is no evidence that the Korea Government had any power to issue a notification like the Korea Award, and it is argued that the other order promulgated on the same day regarding control of price of coal, since it had sprung from another enactment, was valid. We are unable to appreciate this difference. Neither side has been able to produce any papers before us as to the manner in which legislative authority was exercised in the Korea State, but as in all autocratic administrations the will of the Ruler was the law, and in our opinion the Korea Award was made and notified by the same legislative and administrative authority which had the right in Korea State to issue such Orders and Notifications. The Korea Award is signed "By Order" by the Chief Minister of Korea State, and there is no reason for us to doubt that the Chief Minister was giving effect to a decision of an appropriate authority. We pointed out that the Korea Government had on the same day issued the second notification as a corollary to the Korea Award allowing for a corresponding rise in the price of coal; and we appreciate Shri Khambatta's anxiety about the validity of this second notification: but for the validity of this Second notification, this concern would not have enjoyed for all these years the considerable financial benefits given by a higher selling price of coal under the Control Order. We hold that the Korea Award is valid and binding upon the concern before us."

14. In the present reference some additional papers have been produced before me but these in no way affect the correct position as discussed in the aforesaid Appellate decision. In the Korea State Gazette Extraordinary dated August 6, 1947 has been published the speech of the Ruler of Korea State in his capacity as the President of the Eastern States Federal Union, on the occasion of the inauguration of the Eastern States Union at Raigarh on the 1st August, 1947. But the subsequent events referred to above changed the whole situation and beyond the formulation of a paper Constitution of Eastern States Union, no such Union in reality ever came into existence or functioned nor could the Union secure any such 'Benefits of Accession' as mentioned in Section 5 of the Eastern States Union Constitution Act 1947. The important point to note is that even under the said Act in certain respects the sovereignty of the Member States was kept in tact and Section 7 provided that "every State, after it accedes to the Union shall retain its sovereignty, except in so far as such sovereignty is limited by the provisions of the Union Constitution, and it shall continue to possess and enjoy all such rights and exercise all such powers as are not enjoyed or exercised by the Union under this Act." My attention was drawn to Chapter VI of the Union Constitution Act on the distribution of Legislative Powers, where Section 61 lays down:

"Subject to the provisions of this Act, the Union Legislature may make laws for the whole or any part of the area of the Union with respect to matters, enumerated in the Fifth Schedule of this Act and the Legislature of any Member State may make laws for that State or for any part thereof with respect to matters not included in the said Schedule:

Provided that if any provision of any law of any Member State is repugnant to the provisions of a Union law which extends to that State, the Union law, whether passed before or after the law of the Member State, shall prevail and the law of the Member State shall, to the extent of the repugnancy, be void."

And in the said Fifth Schedule the items 24 and 42 are for "regulation of labour and safety in mines" and "trade union; industrial and labour disputes" respectively. Apart from the main fact that no such Union ever functioned or that no such Union Constitution Act was ever brought into force, it is nobody's case that there existed any Union Legislation on the point so as to give rise to the repugnancy referred to in the said section 61.

15. As a matter of fact the Korea Notification is an order made by the Korea State Government on taking into consideration of all the factors. It has been published by Authority in the Korea State Gazette Extraordinary and is signed by Order by the Chief Minister of the Korea State. There was already in force the Government of Korea State Act, 1947 published in the Korea State Gazette Extraordinary dated March 29, 1947 which deals with the various subjects pertraining to the Governance of the State. Section 3 of the Act defines *inter alia* the terms 'Durbar', 'State' and 'Government'. 'Durbar means Shriman Raja Saheb Bahadur and the Ruler for the time being of the Korea State; and 'Government' means the administration of Korea State Part II of the Act deals with the Executive and provides for its functioning. Section 4 there says: (i) the Executive authority of the State shall be exercised by the Ruler directly or through officers appointed by him; (ii) there shall be a Council of Ministers to aid and advise the Ruler in the exercise of his functions, except in so far as he is by or under this Act expected to exercise his functions or any of them in his discretion; (iii) the Ministers whose number shall not exceed 5 shall be appointed by the Ruler and shall hold office during his pleasure. One of them shall be designated as Chief Minister.....: section 5 says: each Minister shall be in charge of such Department and shall exercise such functions as may be directed by the Durbar....; and Section 6 lays down: all orders and other instructions made or executed in the name of the Government shall be authenticated in such manner as the Durbar may direct and the validity of any order or instruction which is so authenticated shall not be called in question on the ground that it is not an order or instruction made or executed by the Government. The Act then goes on to deal with other subjects like Legislature, Finance, Services, Judicature etc. and the Sovereign authority of the Ruler is described in clear terms in section 39 which sates: notwithstanding anything contained in this or any other Act, all powers, Legislative, Executive and Judicial, in relation to the State and its Government are hereby declared to be and to have always been inherent in and possessed and retained by the Durbar and nothing contained in this or any other Act shall affect or be deemed to have affected the powers of the Durbar to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority and in the discharge of his functions as the Ruler of the State to exercise the following prerogatives: (a) the prevention of any grave menace to the peace and tranquility of the State or any part thereof; (b) the safeguarding of the legitimate interests of any section of the subjects of the State; (c) the conferring of titles or honours on any of his subjects; and (d) the power to pardon offenders or to remit, commute or reduce their sentence conditionally or otherwise.

16. The object in issuing the Korea Notification dated 15th November, 1947 has been stated in its preamble quoted *supra*, *viz.* "whereas there has been a general rise in the prices of essential commodities necessitating a positive policy to bring about an improvement in the conditions of workers in the Coal Mining Industry; And whereas the wages of colliery workers have been increased in the Coalfields of Bengal, Bihar, Orissa, C.P. and Berar which are bound to have repercussions in the Coalfields of Korea State." It was thus felt that the State Government should adopt a positive policy in safe-guarding the legitimate interests of certain section of the people of the State, *viz.* the workers in the Coal Mining Industry, due to general rise in the price of essential commodities, so as to avoid any possible repercussions affecting the peace and tranquility of the State in consequence of the increase in the wage of colliery workers in the neighbouring States. It was therefore open to the Ruler of the State to issue orders in exercise his prerogative under section 39 of the Government of the Korea State Act, 1947. Even under the so-called Eastern States Union Constitution Act, section 62(c) lays down that nothing in this Act shall be taken to empower the Union Legislature to affect or curtail in any way the prerogatives of the Ruler within the territories of a Member State. In any view of the matter therefore the order as per Notification published in the Korea State Gazette is perfectly valid.

17. It was next pointed out that the rise in the price of coal which was simultaneously notified did not continue for long and the aforesaid observation in para 18 of the decision of the Appellate Tribunal in the case of the Jhagrakhand Collieries, *viz.* "but for the validity of this second notification, this concern would not have enjoyed for all these years the considerable financial benefits given by a higher selling price of coal under the control Order", is not quite correct. Under the Notification of the same date, *viz.* 15th November 1947 the following prices at which coal may be sold by colliery owners were laid down: Run of mine, Dust Coal and Slack—Rs. 16/6; Steam Coal, Rubble and Smithy nuts Rs. 17/6 and these prices were to come into force with effect from 1st November, 1947 *i.e.* the same date on which the Korea Award was made enforceable. Subsequently after the merger of the Korea State, under the Government of India, Ministry of Industry and Supply Notification dated 31st January, 1948 the said prices of Rs. 16/6 and Rs. 17/6 were reduced to Rs. 14|3 and Rs. 15|3 for the same varieties of coal. This Notification was issued in exercise of the powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947 read with sub-clause (1) of clause 4 of the Korea State Colliery Control Order 1944 and in supersession of the Korea State's Notification dated the 15th November, 1947. Thus undoubtedly there was a slight reduction in the coal price but it may be noted that the reduced rates compared favourably with the original rates prevailing prior to the Korea Notification dated 15th November, 1947. Under the Notification dated 31st March, 1945 published in the Korea State Gazette Extraordinary on the same date, the rates prescribed were Rs. 13/1 and Rs. 14/1 for the same varieties of coal. It has never before been the stand of the colliery owners that the subsequent Government of India Notification reducing the price of coal affected in any way the validity of the Korea Award or that because of any such Notification it ceased to continue to remain in force any longer. Both under the Korea Notification of 1947 fixing the price of coal and the subsequent Government of India Notification in this respect, the colliery owners did take the benefit of higher rates compared to those fixed under the earlier Korea Notification of 1945. They having accepted the validity of the Korea Notification of 1947 which conferred on them the benefit of higher prices which in fact was a simultaneous measure necessitated by another Notification of the same date *viz.* Korea Award, it is rather surprising that they should accept the one and deny the other. Shri Malviya rightly contended that they cannot blow hot and cold in the same breath, in other words it is not open to them to both approbate and reprobate.

18. It was next pointed out on behalf of the employers that the Korea Award under its clause (8) provides for two types of Bonuses and under clause (9) provides for compulsory contributory Provident Fund but subsequently under the Government of India, Ministry of Labour Notification dated 16th January, 1950 these provisions have been modified. It appears that in exercise of the powers conferred by section 3 of the Coal Mines Provident Fund and Bonus Scheme Act, 1948 the Central Government extended to the State of Rewa and Korea, the Coal Mines Provident Fund Scheme published in the Government Notification dated 11th December, 1948, with certain modifications with effect from 1st January, 1950. This was done just to bring about uniformity in respect of all the collieries. According to Shri Malviya only the production bonus was changed into attendance bonus as the system of attendance bonus applies to all the collieries and moreover the Provident Fund rate remained unchanged. Whatever it may be, any such modification in the Korea Award in respect of other provisions cannot affect the validity of the Award as a whole or of the remaining provisions which still continued to remain in force. Admittedly the other provisions of the Korea Award on the point of D.A. and the rates fixed for the piece-rated workers under the clause 1 have never been denied and the payments have been made accordingly.

19. It is thus clear that the Korea Award binding on the employers and the workers of the North Chrimiri Colliery are entitled to the benefit of clause (2) thereof. The workers so entitled would be any class of employees not covered under clause 1 of Korea Award and the benefit granted is 12½% increase in their basic pay. In the clause 2, however, the words used are "may be granted" and so it has been urged on behalf of the employers that even if the Korea Award is binding, in view of the language used in the second clause, the intention of the Korea State must have been to leave the increase in wages entirely to the discretion of the managements. Assuming this contention were true, even then it does not mean that the so-called discretion is to be exercised arbitrarily or capriciously even to the extent of total denial of the claim. This point too has been considered by the Labour Appellate Tribunal in the aforesaid decision in the case of the Jhagrakhand Collieries in paras 20 and 22 as follows:

> ".....On this subject there are two contentions. Labour contends that the word "may" should be read as "shall", whereas the employers

state that the word "may" gives them complete discretion even to the extent of refusing any increase. The subject is not free from difficulty; but the contention of the employers that by reason of the wording of the clause they have complete freedom in their discretion to pay whatever they like, and even nothing if they so choose, is quite unsustainable. Having regard to the fact that paragraph 2 refers to all other categories, piece-rated, time-rated, and everybody else, not covered by paragraph 1 of the Korea Award, it appears to us that this increase of 12½% was clearly intended to grant them appropriate advances.....It must be remembered that all the categories of workmen specified in paragraph 1 of the Korea Award had been given substantial rises in their wages by reason of the Korea Award, and paragraph 2 was intended to provide for the lesser number of workmen of a miscellaneous character. The central fact, however, is the intention of the Korea Award to give to these workmen covered by paragraph 2 something substantial, so that there might not be any imbalance of wages between them and the categories specified in paragraph 1 of the award. There can thus be no question whatever that the employers had never been given the free discretion to give or not to give anything at their will. It is equally clear that the workmen became entitled to the increases from the date specified in the Korea Award, namely, 1st November, 1947. The only question which remains therefore to be explored is whether the use of word "may" in paragraph 2 means that there has to be an investigation as to whether the categories in paragraph 2 of the Award should all get 12½% or whether some should get less. It is true that while the direction in paragraph 1 is more definite than the word "may" used in paragraph 2, we must look to the history of wages in the area and the benefits which were intended to be conferred. As the preamble itself says, there had been Conciliation Boards in other places like Bihar and C.P. by reasons of which advances had been given to the workmen in those places, and it was therefore intended by the Korea Award to give advances to the workmen here. It is reasonable to argue that if it was the intention of the Korea Award to introduce a degree of flexibility in the application of 12½% to the wages of the several categories involved, it would have proceeded to give some directions in the matter, because it is a notorious fact that to leave matters of undefined flexibility in the hands of the employers leads to disastrous results. The 12½% given was in percentage advance much lower than what had been given to some of the categories in paragraph 1 of the Korea Award, whereas it was a little higher in percentage advance as regards other categories; and it is a possible inference from this that the Korea Award intended by paragraph 2 to give a flat rate advance of 12½% in order to do an adequate degree of justice to all....."

20. It is abundantly clear from the aforesaid observations that the Appellate Tribunal in the case of Jhagrakhand Collieries Limited was inclined to interpret the word "may" as meaning "shall" and it is so stated in para 23 of its decision thus: "While there are these facts to suggest that the word "may" should be construed as if the word "shall" had been used in its place....." In that particular case, however, the Adjudicator below had laid down certain graded scheme to give effect to the provision of 12½% increase in clause (2) of the Korea Award and therefore the Appellate Tribunal on a balance of consideration did not think it proper to disturb the same, though it was not prepared to agree with everything that the Adjudicator said in his award. In the present case there has been no suggestion of any such scheme and it has not been the case of the employers that in giving the increase of 12½% all the employees so entitled are not to be treated alike. The only stand taken by them is that the Korea Award is not binding on them and that even if binding, it is in their discretion to give or not to give the increase of 12½%. This stand is entirely untenable and they are bound to give effect to clause 2 of the Korea Award by giving 12½% increase to the employees concerned. If we refer to clause 10 of the Korea Award on the point of disbursement of wages, it is emphatic in saying that "the employers shall be responsible to ensure that all the workers in the colliery get their wages including dearness allowance in accordance with the new basic wages provided under this order....."

21. The clause 11 of the Korea Award gives retrospective effect from 1st November, 1947 and it is a well known principle that the question of wages is a long term plan. The wage increase allowed under the Korea Award continued to remain in force until it was substituted by a fresh award of All India Industrial

Tribunal (Colliery Disputes) on 26th May, 1956. That the employees on the pay rolls of the colliery at the time of the Korea Award in case it is held binding should get the benefit thereof is not in dispute. It is difficult to understand how the said benefit could be denied to the subsequent entrants as contended on the management's behalf. There could not be such two sets of wages in the same concern and so long as the Korea Award remained in force it was not open to the management to engage the new employees on any lower basis. I thus direct that the management of North Chirimiri Colliery shall grant the increase of 12½% in the basic wages or pay of all the workmen not covered by para 1 of the Korea Award with retrospective effect from 1st November, 1947. The workmen so entitled are those in the employment of the Company on 1st November, 1947 and also those appointed during the period 1st November, 1947 to 26th May, 1956 with effect from the respective dates of their appointments and the differences if any, due to them on the basis of this 12½% increase shall be paid within two months from the date the present Award becomes enforceable. The management shall further pay Rs. 200 by way of costs to the workmen.

(Sd.) P. D. VYAS,
Industrial Tribunal.

The 20th March, 1959.

[No. LRII/1(42)/58.]
K. D. HAJELA, Under Secy.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATION, DELHI. 1959